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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/899,437	07/05/2001	Pierre-Guillaume Raverdy	50P4432.01/1596	3370

7590 07/28/2004

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EXAMINER


AMSBURY, WAYNE P

ART UNIT	PAPER NUMBER
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2171

DATE MAILED: 07/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/899,437	Applicant(s) RAVERDY ET AL. 	
	Examiner Wayne Amsbury	Art Unit 2171	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8,13,28 and 33 is/are allowed.
- 6) ☒ Claim(s) 1-7,9-12,14-27,29-32 and 34-45 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

CLAIMS 1-45 ARE PENDING

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Applicant's arguments filed 6/10/04 have been fully considered but they are not persuasive.

Applicant states on page 14-15 of the Response that the amendment to claim 45, which includes: "...*bi-directionally communicating with said event server directly... are supported by claim 4 and 24, as originally filed, and therefore do not necessitate a new search.*" is supported by claims 4 and 24, as originally filed. To the contrary, claims 4 and 24 state: "...***at least one of a first direct path from said one or more local area networks, an indirect path from said one or more local area networks through an Internet network, and a second direct path from said user device directly through said Internet network.***" [Emphasis added.]

One consequence of the actual claim statements is that a direct path can be interpreted as occurring through the Internet. Another is that a direct path from a local area network is only one embodiment. This in turn implies that the invention as a whole does not require any one of these specific forms of communication path; they are options. Finally, the meaning of *direct* is broad, and does not necessarily in and of itself preclude a path through the Internet.

At page 16 of the Response, Applicant argues that an additional reference is required to teach the expiration of the access code. This fails to take into account both the rejection given and the proper standard of rejection.

As set forth in MPEP §2144, the standard for establishing a *prima facie* case of obviousness includes the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Any reference that literally taught the claimed invention would be rejected under 35 USC §102, not §103.

The rejection given at page 4 of the rejection points out that Faris (US 6,659,861) presages the use of access code expiration, but does not **literally** make this statement. The §103 rejection is made to the extent that this correspondence is not strong enough to support a §102 rejection with Faris, and as a courtesy to make clear the connection between technology and law. The obviousness statement is made in light of ordinary skill in the art. In fact, it surely will be conceded by Applicant that at the time of the invention most adults in this country carried charge cards containing an imprinted and visible expiration date; the technology was ubiquitous. No leap of intuition was required to recognize the utility of expiration dates for services.

In regard to the means-plus-function arguments of page 17 of the Response, it is not stated and it is not at all clear what means elements are not taught by Faris. Applicant appears assume that a §102 reference must be an **invention** identical to that or those taught in the Specification. This is not the case. The standard is that the **teachings** of the reference must match the limitations of the **claimed** invention.

With respect to the combination of Faris and Subrahmanyam (Subram), a motivation for combining the **teachings** of these references was given, and Applicant offers no refutation of that motivation. Further, Subram was used to teach archiving from a client device, not as a system that could be physically combined with that of Faris.

3. Claims 1-3, 5, 9-12, 14-23, 25, 29-32 and 34-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Faris et al (Faris), US 6.659,861, 9 December 2003.

Faris is directed to an internet-based system for enabling a time-constrained competition among a plurality of participants over the Internet [TITLE; BACKGROUND]. A variety of servers are involved in Faris, including a primary server **100** [FIG 2A] that provides an interface between databases and game servers **150** that in turn interface clients **160**.

The primary server manages a time-constrained competition in which event content includes logins of contestants, queries, timeouts, announcements, and results. Access to content is restricted at every stage and level [FIG 3A-3F].

The objects of the invention of Faris provide for *fairly and securely enabling timed-constrained competitions over the Internet* [COL 5 line 45 and after].

Restriction is by public key access codes [FIG 3C-3F; COL 10; COL 29 lines 24-33]. Access to the Internet explicitly includes wireless access [COL 46 lines 8-11].

As to **claims 1, 21, 43 and 44**, which include the limitation of access code expiration, the system of Faris is explicitly time-constrained [TITLE; FIELD; OBJECTS]. Time-constrained processes are inherently constrained by an expiration time [and see COL 6 line 2]. Faris explicitly prevents access before an allotted time for a contest [COL 24 lines 50-52], but does not explicitly state that this is initiation of an access code *per se*, nor explicitly address the expiration of the access code.

However, virtually any charge card such as VISA or MASTER CARD or the like contains both an access code and an expiration date of that code. This would certainly have been well known to one of ordinary skill in the art at the time of the invention.

The expiration of such a code is directed to an event of very long duration, but the span of time during which the code may be used is not relevant to the claimed invention.

To the extent that the expiration of an access code for event content in Faris is not inherent in the use of an access code, **it would have been obvious** to one of ordinary skill in the art at the time of the invention to expire an access code at the finish time of an event because this would prevent access after the end of the constrained period and be more efficient than allowing the code to be maintained but then require trapping and restricting access with that code in at least a second step.

The elements **claims 2, 3, 14, 20 22, 23, 34 and 40** have been rejected in the analysis above and these claims are rejected on that basis.

As to **claims 5 and 25**, Faris teaches the use of voice, wireless communication and removable memories [COL 3 lines 7-15; COL 7 lines 17-47].

The elements of **claims 9-10** are rejected in the analysis above and these claims are rejected on the same basis. As to **claim 11** Faris is directed to system use by a plurality of users, such as contestants.

As to **claim 12**, the definitions of content types are set forth in the Specification beginning at page 18 line 21, where *restricted content* corresponds to content in Faris restricted to one or more contestants, *free content* to content available to all participants, and *public content* to all observers.

Much of the event data of Faris is clearly restricted in a number of ways and certainly information directed to the progress of a particular participant may need to be private, contest rules can be expected to be free, and the results at least are made public [COL 18 lines 8-18] as is the public key of the encryption mechanism.

As to **claims 15-16**, Faris does not explicitly provide configuration information to a user device, but does provide for a variety of configurations [COL 21 lines 25-45] and in particular provides for adjusting to the number of users [COL 23 lines 13-25]. **It would have been obvious** to one of ordinary skill in the art at the time of the invention to inform a user of changes because an additional user may trigger an adjustment of the configuration. Clearly this may involve software updates. Further, the updates of FIG 4D1-4D3 involve updates that correspond to configuration information supplied to the user.

The elements of **claims 17-19, 29-32 and 35-41** are rejected in the analysis above and the general context of Faris and these claims are rejected on that basis.

As to **claim 42**, It would have been obvious to one of ordinary skill in the art at the time of the invention to sign up for future events prior to their occurrence.

4. Claims 4, 6-7, 24 and 26-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Faris et al (Faris), US 6,659,861, 9 December 2003 in view of Subrahmanyam (Subram), US 5,732,214, 24 March 1998.

Subram is directed to archiving from a client (user) device to archive servers in a wide variety of ways including local area networks [COL 3 lines 11-20; COL 8 lines 18-41]. Subram does not explicitly address archiving event content *per se*, but there is no limitation placed on the intended use of the archived data in Subram, and archiving can be triggered by an event [COL 5 line 66 to COL 6 line 4; COL 9 lines 59-60]. **It would have been obvious** to one of ordinary skill in the art at the time of the invention to archive event content upon the occurrence of an event in Subram because otherwise there is no record of which event triggered a given response.

Alternatively, Faris does not explicitly address a number of elements of practice in the art such as the use of wireless base stations, but Subram teaches these elements. **It would have been obvious** to one of ordinary skill in the art at the time of the invention to apply the teachings of Subram to the event content system of Faris because events of interest are generated at a variety of sources that are managed with wireless base stations, direct and indirect access and the like, and it is efficient to use the known techniques of the art rather than customize the system of Faris.

As to **claim 4**, it is well known to connect wireless devices through a wireless base station and to connect to a network through a LAN, as evidenced by Subram [COL 3 lines 11-20 and elsewhere]. Subram demonstrates a variety of direct and indirect modes of access to archiving servers in FIG 1 and throughout the specification.

As to **claims 6-7**, this is a laundry list of components of systems such as those of both Faris and Subram, which inherently reside in the memory of the device involved in any particular mode of access.

Both systems are embodied in software and are inherently based on an operating system. Both involve logins and restricted access of varying degrees of sophistication, downloading and uploading. Faris explicitly notes encoded images [COL 3 lines 7-15], and Faris accommodates video cameras [FIG 9]. Subram is explicit in the use of user profiles [COL 2 lines 28-30], which inherently include metadata.

The elements of **claims 24 and 26-27** are rejected in the analysis above and the general context of Faris and Subram and these claims are rejected on that basis.

5. Claims 8, 13, 28, and 33 are allowed.

The particular combination of elements in claim 8 including time stamped access depending on distinct event services provided after receipt of an access code is neither anticipated nor suggested by the prior art of record. The analysis of claim 28 is similar and it is objected to on the same grounds.

The elements of claims 13 and 33 comprise a particular combination of features that is neither anticipated nor suggested by the prior art of record.

6. Claim 45 is rejected under 35 U.S.C. 103(a) as being unpatentable over Faris et al (Faris), US 6,659,861, 9 December 2003 in view of either Jacobi et al (Jacobi), US 6,584,095 or Bhagat et al (Bhagat), US 6,591,315.

Claim 45 includes the limitation of a direct communication between a user device and an event server through one or more wireless base station transceivers and one or more local area networks. It has been argued in the Response, that Faris necessarily involves the Internet in the communication. Both Jacobi and Bhagat provide evidence that direct connections without such a requirement were well known at the time of the invention.

As to Jacobi, motivation for decentralized support of individual wireless communication devices is given in terms of the need for cooperation between the elements of such networks [COL 1 line 12 and after; COL 2 line 29 and after]. IN Jacobi, each router-server is capable of communicating directly with wireless devices [COL 4 lines 6-19 and elsewhere].

As to Bhagat, the motivation for the system shown in FIG 1 is the savings of time, cost and capacity throughout the entire network. This figure depicts the Internet as one component of the network as a whole, and Bhagat explicitly notes the direct connection between servers and wireless devices [COL 3 lines 3-22 and elsewhere].

7. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Wayne Amsbury whose telephone number is 703-305-3828. The examiner can normally be reached on M-TH 7-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Safet Metjahic can be reached on 703-308-1436. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2171

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

WPA



WAYNE AMSBURY
PRIMARY PATENT EXAMINER